

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHARLES ISELEY,
Plaintiff,
v.

W. CONWAY BUSHEY, et al.,
Defendants.

Civil Action No.

1:00-CV-00577

FILED
HARRISBURG

DEC 21 2000

MARY E. D'ANDREA, CLERK
Per MA DEPUTY CLERK

REPLY BRIEF TO DEFENDANTS' BRIEF IN OPPOSITION
TO PLAINTIFF'S MOTION FOR A TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Basically, the defendants offer no evidence whatsoever to dispute plaintiff's assertion that they are deliberately maintaining false and/or inaccurate data in his files regarding his sentence in order to retaliate against him for exercising his rights. The defendants only offer commitment papers and a false declaration.

Accompanying this brief is a Declaration with plaintiff's sentence orders and a portion of his sentencing transcript which are irrefutable.

The fact that plaintiff's sentences are partially concurrent and partially consecutive renders them illegal. Com v. Ward, 568 A.2d 1242 (Pa. 1990).

However, that is irrelevant. The crux of the matter at hand is whether the defendants have the authority to modify any of plaintiff's sentences.

According to the Pennsylvania Supreme Court, the only entity which has the authority to modify a defendant's sentence is the trial court and that authority can only be usurped by the legislature. Com. v. Ward, 568 A.2d 1242 (Pa. 1990).

In the case at bar, plaintiff's sentence order clearly and specifically states that the 5 to 10 year term begin and take effect at the minimum expiration of all the concurrent terms and therefore it began in July of 1990.

The defendants do not have the authority to ignore the order and to capriciously and arbitrarily modify plaintiff's sentence.

Moreover, the fact that after 1978, the only sentence plaintiff could have been serving was the 5 to 10 year term but the defendants had his files deliberately incorrectly stating that he was serving a sentence of 12 1/2 to 25 years for seven cases even though he only had a 5 to 10 for one case.

The denial of parole based on inaccurate data is a violation. Monroe v. Thigpen, 932 F.2d 1437 (11th Cir. 1991). Accurate sentence data is also required. Sample v. Diecks, 885 F.2d 1099 (3rd Cir. 1989).

Conclusion

Wherefore the court should grant plaintiff's motion.

Respectfully submitted,

Date: December 18, 2000

Charles Iseley
Charles Iseley
AM-9320, 1 Kelley Dr.
Coal Twp., PA 17866

6. Consequently I was sentenced to a maximum of 87 years ($5 \cdot 15 + 2 + 10 = 87$) and my aggregated sentence was $12\frac{1}{2}$ to 25 years.

7. The accompanying sentence transcript portion and sentence orders verify the above facts.

8. In 1985 I should have received two years credit for serving the entirety of the 1 to 2 year term from January 1983 to January 1985.

9. In 1998 I should have received 75 years credit for serving the entirety of each of the $7\frac{1}{2}$ to 15 year terms from January 1983 to January 1998 ($5 \cdot 15 = 75$).

10. In 1999 I should have received 10 years credit for serving the entirety of the 5 to 10 year term from January 1983 to December 1983 plus July 1990 to August 1999.

11. Thus, in 15 years, from 1983 to 1998, I accrued 77 years of credit for all the concurrent terms ($5 \cdot 15 + 2 = 77$) and in 10 years, from January 1983 to December 1983 plus July 1990 to August 1999, I accrued 10 years of credit for the 5 to 10 year term.

12. As a result, I accrued 87 years, which is exactly the ~~maximum~~ amount I was ordered to serve ($5 \cdot 15 + 2 + 10 = 87$).

13. It is axiomatic that 15 years plus 10 years equals 25 years, which is exactly the aggregated maximum sentence.

14. Nevertheless, I am still in prison because the defendants claim that they have the authority to order my 5 to 10 year term to begin at the maximum expiration of my concurrent terms regardless of what the trial court sentenced me to and what the sentence orders specifically state.

15. They are doing it to retaliate against me for filing legal actions and grievances,

16. After January 1998, the only term I could have been serving was the 5 to 10 year term.

17. However, the defendants continue to falsely and inaccurately maintain my records showing that I was serving a 25 year sentence for seven cases - which was not true.

18. I was only serving a 5 to 10 year sentence after 1998 for one case and the defendants' intentional refusal to acknowledge this has had expected adverse parole consequences.

Date: December 18, 2000

Charles Isely
Charles Isely

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHARLES ISELEY

Plaintiff,

✓

W. CONNELL BUSHEY, et al.,
Defendants

Civil Action No.

1:00-CV-00577

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing Reply Brief to Pet's! Brief in Opposition to Plaintiff's Motion for the and/or Preliminary Injunction, and Declaration by mailing copies of same to:

Maryanne Lewis, dep. atty gen
Office of Atty. Gen
Strawberry Sq.
Harrisburg, PA 17120

Date: December 18, 2000

Charles Isely
Charles Isely

1 assume the time served is sometime shortly after the
2 date of the Collins offense. I note on the
3 presentence investigation report of Mr. Metzler
4 that it notes that credit time should be given from
5 January 25, 1983 to present, whether that is the
6 exact date or not I am not sure. I assume that they
7 were arrested --

8 MR. GOLDMAN: Iseley was one day
9 less.

10 MR. THOMPSON: The preliminary
11 arraignment, Your Honor, was 1:00 a.m. on January
12 22nd.

13 THE COURT: That would be the date
14 custody?

15 MR. GOLDMAN: Metzler had one day on
16 the street.

17 THE COURT: For record purposes, in
18 all of Mr. Iseley's cases he should be given credit
19 for time served since January 22, 1983 as against
20 all of the sentences imposed. I assume the date is
21 January 23 then, is that correct?

22 MR. BRILL: I don't know what the
23 date is.

24 THE COURT: We will make it for
25 record purposes as January 22, 1983. We will make

PROS
SURCHARGE
COMMONWEALTH

BUCKS COUNTY
SENTENCE SHEET

OTW
ACCOMPANYING CASES:

JUDGE: G. T. W.
D.A.: C. T. Thompson

PD/DEF: T. Thompson
DATE: 12-11-00

BUCKS COUNTY PRISON

On Information No. 1373, the Court (having received or waived a pre-sentence investigation) orders and directs that the defendant pay the cost of prosecution and undergo imprisonment in the Bucks County Prison for not less than 7 years nor more than 12 years and stand committed until sentence is complied with. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c).

STATE PENITENTIARY

On Information No. 1373, the Court (having received or waived a pre-sentence investigation) orders and directs that the defendant pay the cost of prosecution and undergo imprisonment for not less than 7 years nor more than 12 years in a State Correctional Institution as shall be designated by the Bureau of Correction and, therefore, sent to the Correction Diagnostic and Classification Center in Graterford, Pa., for this purpose. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c). Defendant is directed to stand committed until judgment be fully complied with.

AND

On Information No. 1373, the defendant having waived his right to a speedy trial is released on probation for a period of 18 months upon the following conditions. Defendant is directed to pay court costs and make restitution in the sum of \$ 100.00 within a period of 18 months, and shall follow all specific conditions as hereinafter set forth.

ON INFORMATION NO. 1373

The defendant is released on probation for a period of 18 months under the supervision of the (Bucks County Probation Officer or State Parole Board) from the following conditions. Defendant to pay cost of prosecution and in lieu of a fine pay \$ 100.00 for the use of the County of Bucks (and make restitution in the sum of \$ 100.00) in monthly installments of \$ 10.00 by making payment to his probation officer and abide by the rules and regulations laid down by his probation officer, obey the law in all other respects and stand committed until the same be complied with.

1373-83

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FINE ONLY

On Information No. 1373, the defendant is able to pay a fine order and directs the prosecution and a fine in the sum of \$ 100.00 be paid in 18 equal monthly installments of \$ 5.56 to the State Treasurer or the County of Bucks.

SPECIAL PROVISIONS:

Costs & Mo. off release
Concurrent with

83-1
83-1
83-1
83-1
83-1

Credit for fine served

PROS: OTM: 12-1473
SUSPENSE: ACCOMPANYING CASES: 8-13-151-151
BUCKS COUNTY SENTENCE SHEET
COMMONWEALTH v. *Charles Schaefer*
JUDGE: G.T. Miller NO. 13725
D.A. D. Holloman
T.D. DEF. T. Josephman
DATE: 12/1/00
Charles Schaefer

BUCKS COUNTY PRISON

On Information No. 1375 the Court having received or waived pre-sentence investigation orders and directs that the defendant pay the cost of prosecution and undergo imprisonment in the Bucks County Prison for not less than 1 year and stand committed until sentence is complied with, Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and Pa. Rule of Criminal Procedure 1406 (b) and (c).

STATE PENITENTIARY

On Information No. 1375 the Court having received or waived pre-sentence investigation orders and directs that the defendant pay the cost of prosecution and undergo imprisonment for not less than 7 1/2 years not more than 15 years in a State Correctional Institution as shall be designated by the Bureau of Correction and, therefore, sent to the Correction Diagnostic and Classification Center in Greeterford, Pa., for this purpose. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c). Defendant is directed to stand committed until judgment be fully complied with.

On Information No. 1375 the defendant having waived his right to a speedy trial is released on probation for a period of 1 year upon the following conditions: Defendant is directed to pay court costs and make restitution in the sum of \$100 within a period of 1 month. Defendant shall follow all specific conditions as hereinafter set forth.

ON INFORMATION NO. 1375

The defendant is released on probation for a period of 1 year under the supervision of the Bucks County Probation Officer or State Parole Board from the following conditions: Defendant to pay cost of prosecution and in lieu of a fine pay \$100 for the use of the County of Bucks (and make restitution in the sum of \$100) in monthly installments of \$10 by making payment to his probation officer and abide by the rules and regulations laid down by his probation officer, obey the law in all other respects and stand committed until the same be complied with.

Upon motion of the District Attorney a bench warrant is issued for the attachment of

CONSECUTIVE SENTENCES

The sentence heretofore imposed on Information No. 1375 is to begin and take effect at the expiration of the minimum sentence imposed on Information No. 1375 and, therefore, the sentence to be served by the defendant for the total of all offenses with respect to which sentence is imposed is a minimum of not less than 1 years or a maximum of 15 years.

SUSPENDED SENTENCE

On Information No. 1375 defendant is directed to pay the cost of prosecution and sentence is suspended.

SENTENCE - WOMEN- HURCY

The Court finding the defendant to be a female over the age of 16 years, (having received or waived a pre-sentence investigation) orders and directs the defendant to pay the cost of prosecution and further directs that she undergo confinement in the State Industrial Home for Women at Hunny, Pa., for a period of not less than 1 year and not more than 15 years and there to be fed, clothed and treated in all respects as provided by law and stand committed until the same be complied with. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c).

CRIMINAL PENALTY

On Information No. 1375 the Court finding that the defendant is able to pay a fine orders and directs the defendant to pay the cost of prosecution and a fine in the sum of \$100 to the Commonwealth from the use of the (State) Treasurer or the County of Bucks. The total fine and costs are to be paid in equal monthly instalments.

FINE ONLY

On Information No. 1375 the Court finding that the defendant is able to pay a fine orders and directs the defendant to pay the cost of prosecution and a fine in the sum of \$100 to the Commonwealth from the use of the (State) Treasurer or the County of Bucks. The total fine and costs are to be paid in equal monthly instalments.

SPECIAL PROVISIONS:

Costs and fines to be paid in equal monthly instalments.



Costs and fines to be paid in equal monthly instalments.

PROS:
SURCHARGE:

BUCKS COUNTY
SENTENCE SHEET

OTN: C 1372-1373
ACCOMPANYING CASES: 175-372
50/201

COMMONWEALTH v: *Charles Bailey*
JUDGE: *G.T. Keller*
D.A. *R. Goldman*
PD/DEF *T. Thompson*

DATE: 1/7/83

NO. 13-1373
CLERK: *D. Blum*
NOTES BY: *D. Blum*
George P. Tolson

BUCKS COUNTY PRISON

On Information No. 19 the Court (having received or waived a pre-sentence investigation) orders and directs that the defendant pay the cost of prosecution and undergo imprisonment in the Bucks County Prison for not less than _____ nor more than _____ and stand committed until sentence is complied with. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c).

STATE PENITENTIARY

On Information No. 1373 the Court (having received or waived a pre-sentence investigation) orders and directs that the defendant pay the cost of prosecution and undergo imprisonment for not less than 7 years nor more than 15 years in a State Correctional Institution as shall be designated by the Bureau of Correction and, therefore, sent to the Correction Diagnostic and Classification Center in Graterford, Pa., for this purpose. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c). Defendant is directed to stand committed until judgment be fully complied with.

ARD

On Information No. 19 the defendant having waived his right to a speedy trial is released on probation for a period of months upon the following conditions. Defendant is directed to pay court costs and make restitution in the sum of \$ _____ within a period of months, and shall follow all specific conditions as hereinafter set forth.

ON INFORMATION NO. 19

the defendant is released on probation for a period of _____ under the supervision of the (Bucks County Probation Officer or State Parole Board) from the following conditions. Defendant to pay cost of prosecution and in lieu of a fine pay \$ _____ for the use of the County of Bucks (and make restitution in the sum of \$ _____ in monthly installments of \$ _____ by making payment to his probation officer) and abide by the rules and regulations laid down by his probation officer, obey the law in all other respects and stand committed until the same be complied with.

BENCH WARRANT

Upon motion of the District Attorney a _____ attachment of _____

CONSECUTIVE SENTENCES

The sentence heretofore imposed on Information No. 19 begin and take effect at the expiration of the Information No. 19, and, therefore, by the defendant for the total of all offense is imposed for a minimum of not less than _____ years.

SUSPENDED SENTENCE

On Information No. 19 def. of prosecution and sentence is suspended.

SENTENCE - WOMEN - MUNCY

The Court finding the defendant over the age of 16 years, (having received or waived a pre-sentence investigation) orders and directs the defendant to pay the cost of prosecution and undergo confinement in women at Muncy, Pa., for a period of not less than _____ years and there to be fed, clothed as provided by law and stand committed until the sentence is complied with. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c).

GUILTY WITHOUT FURTHER PENALTY

On Information No. 19, the purpose would be served by imposing an order of probation and directs the defendant to pay the cost of prosecution and stand committed until the sentence of guilty without further penalty is complied with.

FINE ONLY

On Information No. 19, the defendant is able to pay a fine orders and directs the defendant to pay the cost of prosecution and a fine in the sum of \$ _____ use of the (State Treasurer or the County of Bucks) are to be paid in _____ equal monthly installments.

SPECIAL PROVISIONS:

Carts within 6 mos of
Concurrent with
\$5 _____
\$1 _____
\$3 _____
\$3 _____
\$3 _____
\$3 _____
From Credit for Time _____

PROS: OTM: ACCOMPANYING CASES #3 - 1372-1373
 SURCHARGE: BUCKS COUNTY SENTENCE SHEET
 NO. 1371-1741
 COMMONWEALTH v. Christopher J. Blum
 JUDGE: G.T. Fletcher
 D.A. R. Johnson
 NOTES BY: J. Blum
 CLERK: D. W.
 PD/DET T. Thompson
 DATE: 1/22/01

BUCKS COUNTY PRISON

On Information No. 1371 the Court having received or waives a pre-sentence investigation orders and directs that the defendant pay the cost of prosecution and undergo imprisonment in the Bucks County Prison for not more than 1 years and stand committed until sentence is complied with. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c).

STATE PENITENTIARY

On Information No. 1371 the Court having received or waives a pre-sentence investigation orders and directs that the defendant pay the cost of prosecution and undergo imprisonment for not less than 7 1/2 years nor more than 1 years in a State Correctional Institution as shall be designated by the Bureau of Correction and, therefore, sent to the Correction Diagnostic and Classification Center in Graterford, Pa., for this purpose. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c). Defendant is directed to stand committed until judgment be fully complied with.

ARD

On Information No. 1371 the defendant having waived his right to a speedy trial is released on probation for a period of months upon the following conditions. Defendant is directed to pay court costs and make restitution in the sum of \$0 within a period of months, and shall follow all specific conditions as hereinafter set forth.

ON INFORMATION NO. 1371

the defendant is released on probation for a period of 18 months under the supervision of the (Bucks County Probation Officer or State Parole Board) from the following conditions. Defendant to pay cost of prosecution and in lieu of a fine pay \$0 for the use of the County of Bucks (and make restitution in the sum of \$0) in monthly installments of \$0 by making payment to his probation officer and abide by the rules and regulations laid down by his probation officer, obey the law in all other respects and stand committed until the same be complied with.

BENCH WARRANT

Upon motion of the District Attorney a bench warrant is issued for the attachment of

CONSECUTIVE SENTENCES

The sentence heretofore imposed on Information No. 1371 is to begin and take effect at the expiration of the minimum sentence imposed on Information No. 1371 and, therefore, the sentence to be served by the defendant for the total of all offenses with respect to which sentence is imposed is a minimum of not less than 1 years or a maximum of 8 years.

SUSPENDED SENTENCE

On Information No. 1371 defendant is directed to pay the cost of prosecution and sentence is suspended.

SENTENCE - WOMEN- HUNCEY

The Court finding the defendant to be a female over the age of 16 years, (having received or waives a pre-sentence investigation) orders and directs the defendant to pay the cost of prosecution and further directs that she undergo confinement in the state Industrial home for women at Huncey, Pa., for a period of not less than 1 years and there to be fed, clothed and treated in all respects as provided by law and stand committed until the same be complied with. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c).

ENTITY WITHOUT FURTHER PENALTY

On Information No. 1371, the Court finding that no useful purpose would be served by imposing an order of probation, the Court hereby orders and directs the defendant to pay the cost of prosecution and imposes the sentence of guilty without further penalty.

FINE ONLY

On Information No. 1371, the Court finding that the defendant is able to pay fines orders and directs the defendant to pay the cost of prosecution and fine in the sum of \$0 to the Commonwealth for the use of the (State Treasurer or the County of Bucks). The total fine and costs are to be paid in 12 equal monthly installments.

SPECIAL PROVISIONS:

Credit within 60 days of release

Concurrent with

6/3 - 1372

8/3 - 1372

8/3 - 1372

8/3 - 1372

1375 - 99 P.

Credit for Time Served

PROS:

SURCHARGE:

BUCKS COUNTY
SENTENCE SHEET

COMMONWEALTH v. Charles J. Kelly
 JUDGE: G. T. Belter
 D.A. R. Goldman
 PD/DEF T. Thompson
 DATE: 12/7/83

OTN:

ACCOMPANYING CASES:

NO. D-1-41CLERK: D. Wm.NOTES BY: V. Blum

BUCKS COUNTY PRISON

On Information No. 19 the Court (having received or waives a pre-sentence investigation) orders and directs that the defendant pay the cost of prosecution and undergo imprisonment in the Bucks County Prison for not less than 1 nor more than 1 and stand committed until sentence is complied with. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c).

STATE PENITENTIARY

On Information No. 1241 1983 the Court (having received or waives a pre-sentence investigation) orders and directs that the defendant pay the cost of prosecution and undergo imprisonment for not less than 1 years nor more than 1 years in a State Correctional Institution as shall be designated by the Bureau of Correction and, therefore, sent to the Correction Diagnostic and Classification Center in Graterford, Pa., for this purpose. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c). Defendant is directed to stand committed until judgment be fully complied with.

ARD

On Information No. 19 the defendant having waived his right to a speedy trial is released on probation for a period of 12 months upon the following conditions. Defendant is directed to pay court costs and make restitution in the sum of \$ 100 within a period of 12 months, and shall follow all specific conditions as hereinafter set forth.

ON INFORMATION NO. 19,

the defendant is released on probation for a period of 12 under the supervision of the (Bucks County Probation Officer or State Parole Board) from the following conditions. Defendant to pay cost of prosecution and in lieu of a fine pay \$ 100 for the use of the County of Bucks (and make restitution in the sum of \$ 100 in monthly installments of \$ 10 by making payment to his probation officer) and abide by the rules and regulations laid down by his probation officer, obey the law in all other respects and stand committed until the same be complied with.

BENCH WARRANT

BENCH WARRANT

Upon motion of the District Attorney attachment of _____

CONSECUTIVE SENTENCES

The sentence heretofore imposed on 19 begin and take effect at the expiration of Information No. 19, and, there by the defendant for the total of all offe is imposed is a minimum of not less than 1 years.

SUSPENDED SENTENCE

On Information No. 19 of prosecution and sentence is suspended.

SENTENCE - WOMEN- MUNCY

The Court finding the defendant over the age of 16 years, (having received a pre-sentence investigation) orders and directs the defendant to stand committed to women at Muncy, Pa., for a period of not less than 1 years and there to be fed, as provided by law and stand committed until judgment be fully complied with. Credit is to be given for all time spent in custody as is provided for by Sec. 1360 of the Sentencing Code of 1974 and by Pa. Rule of Criminal Procedure 1406 (b) and (c).

GUILTY WITHOUT FURTHER PENALTY

On Information No. 19, purpose would be served by imposing an order of probation and directs the defendant to pay the fine imposed.

FINE ONLY

On Information No. 19, defendant is able to pay a fine and directs the defendant to pay the fine in the sum of \$ 100 for the use of the (State Treasurer or the County) are to be paid in 12 equal monthly installments.

SPECIAL PROVISIONS:

Committee Court within 6 Months Concurrent to Probation and other Credit for time served